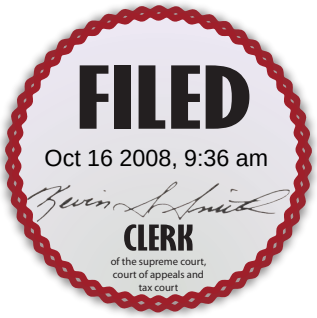

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL EWARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0803-CR-164
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Mendes, Judge Pro-Tempore
Cause No. 49G17-0801-FB-012220

October 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Michael Eward appeals his conviction for Criminal Confinement,[1] a class D felony, challenging the sufficiency of the evidence. Specifically, Eward argues that the State failed to prove that he had moved the victim from one place to another, which is an essential element of confinement. Finding no error, we affirm the judgment of the trial court.

FACTS

On January 12, 2008, Crystal Brown left the apartment she shared with Eward in Greenwood to go babysit for a friend. Sometime during the night, Eward called Brown and asked what time she would be home. Eward became angry when she told him that it would be 3:00 or 3:30 a.m. Around 4:00 a.m. on January 13, 2008, Eward again called Brown and told her to come home because he was locked out of their apartment. When she arrived, Eward was waiting for her outside, and they walked to the apartment where Eward removed a key from his pocket and unlocked the door.

As soon as they entered the apartment, an argument erupted. Eward told Brown to leave, but as she started to walk out the door he pulled her back into the apartment by her hair, pulling out clumps in the process. After Brown fell backwards onto the kitchen floor, Eward proceeded to hit her in the face. The physical altercation continued until Brown fled the apartment and spent the night at a friend's house.

Brown returned to the apartment the following afternoon to get ready for work. Another physical altercation erupted after she finished showering, and she fled the

[1] Ind. Code § 35-42-3-3.

apartment in a towel and a pair of shorts. Police were summoned to the apartment, and Eward was arrested.

On January 15, 2008, Eward was charged with strangulation, a class D felony; criminal confinement, a class D felony; domestic battery, a class A misdemeanor; and battery, a class A misdemeanor. Eward waived his right to trial by jury, and his bench trial commenced on February 20, 2008. Eward was convicted of criminal confinement, a class D felony, and battery, a class A misdemeanor.

Thereafter, the trial court sentenced Eward to 545 days incarceration for criminal confinement and 365 days incarceration for battery to run concurrently. Eward now appeals.

DISCUSSION AND DECISION

Indiana Code section 35-42-3-3 provides that "[a] person who knowingly or intentionally . . . removes another person . . . from one (1) place to another . . . commits criminal confinement." When the sufficiency of evidence is challenged, we will neither reweigh the evidence nor judge the credibility of witnesses. Cornelius v. State, 508 N.E.2d 548, 549 (Ind. 1987). Instead, "we will look to the evidence most favorable to the State together with all reasonable inferences to be drawn therefrom." Id. The conviction must be affirmed "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007).

Here, Brown testified that Eward "grabbed [her] by the back of [the] hair and pulled [her] back in the apartment." Tr. p. 8, 25-26. Brown stated that she was pulled backwards from the doorway and she fell onto the kitchen floor. Id. at 8.

Notwithstanding the above evidence, Eward maintains that he did not "remove" Brown from "one place to another" because the door from which Brown was exiting the apartment is in the kitchen, which is where Brown landed after Eward pulled her backwards and she fell. Appellant's Br. p. 7. Thus, Eward essentially argues that because he did not remove Brown from one "distinct area" of the apartment to another, there was no "removal" from one place to another as the statute requires. Id.

Our Supreme Court has addressed what constitutes removal "from one place to another" under Indiana Code section 35-42-3-3. In Brown v. State, our Supreme Court stated that the word "remove" as used in the statute means "that it is unlawful to cause another person to move from a place or location for specified improper reasons." 868 N.E.2d 464, 468 (Ind. 2007). Also, in Cornelius, our Supreme Court rejected the defendant's assertion that moving the victim only a few feet was insufficient to sustain a conviction for criminal confinement, recognizing that the statute does not provide exceptions dependent upon how far the victim is moved. 508 N.E.2d at 549. Thus, the term "remove" as used in the statute is not defined by the amount of distance the victim is moved or whether the victim is moved to a "distinct area."

In light of Brown and Cornelius, Eward's argument that he did not remove Brown from one place to another fails. The record shows that Eward removed Brown by pulling her hair, causing her to move backwards from the doorway and into the kitchen. Furthermore, the exact distance that Brown was moved is immaterial because the statute neither requires that the victim be moved a minimum distance nor provides an exception for short distances. Moreover, the statute does not require that the victim be removed

from one “distinct area” to another. Thus, we conclude that the evidence was sufficient to support Eward’s conviction for confinement.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.